

<p style="text-align: center;">Twenty-Seventh-B Judicial/Prosecutorial District Case Management System for Criminal Superior Court</p>

Rule 1: General Provisions

1.1 The purpose of these rules is to institute a Case Management System (CMS) that will provide for the orderly, prompt, and just disposition of criminal matters in the Twenty-Seventh-B Judicial/Prosecutorial District. It is intended that matters addressed pursuant to this system be resolved in a fashion to protect the interests of this District and the victims of crime; as well as insure that the rights of the Defendants are preserved.

1.2 The calendar for the disposition of criminal cases in the Twenty-Seventh-B Judicial/Prosecutorial District, Superior Court Division, shall be set and maintained by the District Attorney in accordance with these rules. The District Attorney shall establish and maintain a case tracking system to monitor the number, age, type, and procedural status of each case. The term "District Attorney" shall include the elected District Attorney for the Twenty-Seventh-B Prosecutorial District and his designees.)

1.3 These rules shall be construed in such a way as to avoid technical delay.

1.4 It is recognized that these rules are not complete in every detail and will not cover every situation which may arise. In the event that these rules do not cover a specific matter, the District Attorney is authorized to act in his discretion, subject to the laws of North Carolina and the United States. The District Attorney shall consult with the Senior Resident Superior Court Judge or a Resident Superior Court Judge regarding resolution of the issue raised. If no resident judge is available, then the District Attorney should consult with the Presiding Judge.

1.5 These rules shall be filed in the offices of the Clerks of Court in each of the counties composing the Twenty-Seventh-B Judicial District and may be cited accordingly; provided however, until further notice these rules shall apply only to Cleveland County.

1.6 The District Attorney shall distribute a copy of these rules to each member of the Bar of the Twenty-Seventh-B Judicial District. The District Attorney shall maintain a supply of printed rules to be provided to attorneys upon request.

1.7 The Clerks of Superior Court shall provide a file number for each case at the time of indictment. That file number **shall** be designated on all subsequent pleadings and papers filed with the Clerk of all subsequent communications to opposing counsel, parties, or court personnel. All pleadings in a case, all motions, and any document needed to comply with these rules shall be filed with the Clerk.

1.8 The provisions of these rules shall apply to all Superior Court cases in which a true bill of indictment was returned on or after February 2nd, 1998, in Cleveland County. Such cases shall be termed, "Case Management System (CMS) Cases." Superior Court filings prior to February 2nd.,

1998, shall be termed, "Pre-Case Management System (Pre-CMS) cases," and may be integrated into the Case Management System.

1.9 These rules shall not apply to cases designated as "Exceptional" by the District Attorney or the Senior Resident Superior Court Judge or the Resident Superior court Judge. Cases which may be designated as "Exceptional" include, but are not limited to , complicated homicides; multiple-defendant or numerous victims crimes; complicated white collar crimes, and those requiring extraordinary scientific investigation.

RULE 2: Time Standard Goals

2.1 Absent exigent circumstances, each case not designated as "Exceptional" should be tried or disposed of no more than eighteen (18) months after its "**Initiation Date.**" Initiation Date is defined as the date of the return of service of an indictment. It is the goal of CMS that ninety (90%) percent of the non-exceptional cases reach disposition within twelve (12) months of Initiation Date.

2.2 Cases designated as "Exceptional" shall receive specialized scheduling orders for the purpose of facilitating timely disposition.

Rule 3: Discovery

3.1 No later than four weeks after the Initiation Date, the District Attorney shall provide photocopies of discovery in each file, as indicated on the Discovery Certificate, to the attorney of record entering a general appearance in that case. Said photocopies shall be provided one time to the current attorney of record. Should a change in defense counsel occur, it is the joint responsibility of both new and previous counsel to ensure that the photocopied discovery material is transferred from previous counsel of record to new counsel of record. Photocopies shall not be distributed to defense counsel entering only a limited appearance.

3.2 The District Attorney or the Assistant District Attorney assigned to a case shall be responsible for completing a "Discovery Certificate (DC)" for that case. (See sample DC which is attached as Exhibit A.) A completed and signed Discovery Certificate shall accompany the photocopied discovery and shall be served upon the defense attorney of record in one of the following ways: (a) personal delivery, (b) U.S. postal delivery, (c) delivery to the office of the defense attorney of record, or (d) by depositing into the attorney's mailbox located in the office of the Clerk of Superior Court of the county where venue lies. A completed and signed DC shall also be filed with the Clerk of Superior Court for placement in the court file.

3.3 All discovery motions filed by defense counsel shall contain one of the following certification provisions and shall be signed by the moving party:

I, the undersigned attorney of record, do hereby certify to the Court that prior to the filing of this motion I have thoroughly reviewed the discovery material supplied to me in this case by the office of the District Attorney.

Signature of Movant

Date

OR

I, the undersigned attorney of record, do hereby certify to the court that as of this date, more than four weeks have passed from the date of Indictment and the District Attorney has failed to provide me with any discovery material in this case.

Signature of Movant

Date

Rule 4: Calendaring Prior to Trial

4.1 At least once each month, in intervals of no greater than five weeks, the Senior Resident Superior Court Judge shall schedule a criminal session primarily devoted to administration of the criminal calendar, and time permitting, the remaining portion devoted to jury trials. This session shall be known as the "Case Management Session." All remaining criminal sessions, not deemed as "Case Management Session," will be reserved, to the extent reasonably possible, for the trial of cases. Unless prevented by circumstances created by the rotation of judges, each Case Management Session should be held before a Resident Superior Court Judge.

4.2 Each case shall be calendared for three specific Case Management Session settings following the Initiation Date. The defendant, defense counsel and the State, shall be present at each such setting of court.

4.3 The first administrative calendar setting ("First Setting") shall occur during the first Case Management Session following the First Setting. (It is expected that the Second Setting shall be no later than eight (8) weeks from the Initiation Date.) The following matters shall be accomplished at the Second Setting: (This list is not all inclusive as to what may be accomplished.)

- Hearing of pre-arraignment motions;
- Pre-trial discussions between counsel;
- Pre-trial conference with Judge (if requested);
- Status inquiry, including possible disposition by guilty plea;
- A determination, if not made earlier, as to whether a case will be declared "Exceptional"; and
- Hearings required under Rule 24 of the Rules of Court for Capital cases.

4.5 The third administrative calendar setting ("Third Setting") shall occur during the next Case Management Session following the Second Setting. (It is expected that the Third Setting shall be

no after than twelve (12) weeks from the Initiation Date.) The following matters shall be accomplished at the Third Setting: (This list is not all inclusive as to what may be accomplished.)

- Pre-trial conference, if not held at Second Setting;
- Possible disposition by guilty plea, or Arraignment and entry of not guilty plea;
- Scheduling of deadline for filing pre-trial motions;
- Calendaring of pre-trial motion hearing date; and
- Calendaring of trial date or,
- Entry of scheduling order for Exceptional Case.

Rule 5: Motions

5.1 All pre-arraignment motions, as defined by Statute or law, shall be filed no later than seven (7) days prior to the Second Setting and will be heard at the Second Setting.

5.2 All pre-trial motions shall be filed and heard no later than on dates established at the Third Setting. Hearing dates for motions are firm hearing dates. Each attorney should bring his/her personal calendar to the Third Setting so that existing conflicts may be considered. Barring unusual circumstances or agreement by the parties to hear them earlier, pre-trial motions shall be heard during the **Case Management Session** which immediately precedes the established trial date.

5.3 Except for extreme circumstances which could not have been reasonably foreseen, all motions, whether pre-arraignment or pre-trial, filed outside the established deadlines shall be subject to summary dismissal by the Presiding Judge. This provision does not apply to motions which are appropriately directed to the judge presiding at trial.

Rule 6: Plea Offers

6.1 In every case, the District Attorney or the Assistant District Attorney responsible for a case [the **Responsible Prosecutor (RP)**] shall extend a written plea offer to defense counsel of record no later than six (6) weeks after the Initiation Date of a case.

6.2 Defense counsel of record has a responsibility to convey all plea offers to the Defendant.

Rule 7: Scheduling of Plea

7.1 During each **Case Management Session**, the Presiding Judge shall schedule the hearing of guilty pleas at a time-certain.

Rule 8: Pre-Trial Conference

8.1 During each **Case Management Session** the Presiding Judge shall schedule a plea conference at a time-certain.

Rule 9: Trial Settings

9.1 The Presiding Judge shall establish trial dates at the Third Setting. This phase of the Third Setting shall occur at 2:00 P.M. or as otherwise set by the Court, on the date of such setting. The District Attorney shall produce and maintain a six month schedule of the weeks during which Assistant District Attorneys are scheduled for jury sessions of Superior Court. Defense counsel are responsible for having personal calendars available at the Third Setting in order to inform the Court of any personal or professional scheduling conflicts.

9.2 The established trial date shall be a firm date. Continuance will not be granted, even if all parties agree, unless for a crucial cause that could not have been reasonably foreseen, and the fair administration of justice requires a continuance.

9.3 At the Third Setting, the Court shall enter a Scheduling Order in all cases except Exceptional Cases. The Scheduling Order shall set forth the deadline for the filing of pre-trial motions, the date for the hearing of pre-trial motions and the trial date. A sample Scheduling Order is attached to these Rules as Exhibit "B". Scheduling orders for Exceptional Cases may contain deadlines for additional case events as necessary and appropriate.

9.4 Any request for a priority or preemptory setting based upon out-of-town witnesses, expert witnesses or other scheduling concerns should be addressed to the Judge at the Third Setting.

9.5 Any case which is not reached for trial during the scheduled session of court shall be rescheduled for trial by the Senior Resident Superior Court Judge, or the Presiding Judge, upon conferring with counsel.

Rule 10: Printed Calendars

10.1 Not less than ten (10) days prior to each **Case Management Session**, the District Attorney shall prepare and publish a calendar of case setting as described in Rule 4. This calendar shall be separated into First Settings, Second Settings and Third Settings.

10.2 The order of cases called within each **Case Management Session** shall be: (a) Defendants with Attorneys' of record; (b) Defendants with no attorney of record. The calling of cases with attorneys of record will be alphabetically by attorney. The "attorney of record" will be based solely upon the record in the Clerk's file.

10.3 The Calendar for the **Non-Case Management Sessions** of court shall be prepared and published by the District Attorney as provided in NCGS 7A-49.3.

Rule 11: Motions for Continuances

11.1 All motions for continuance must be in writing, filed and delivered to the office of the Senior Resident Superior Court Judge and opposing counsel not later than noon on Wednesday preceding the session in which the trial is calendared. Oral motions or motions filed out of time must show good cause for the failure to file a timely written motion.

11.2 Every continuance motion must state the following:

- the age of the case;
- whether the defendant is in jail;
- whether the defendant has co-defendants and the names of any co-defendants;
- the number of times the case has previously appeared on a trial calendar;
- the opposing counsel has been consulted regarding the continuance;
- whether opposing counsel consents; and
- the moving party's position on when the trial should be rescheduled if continued.

11.3 The Senior Resident Superior Court Judge will issue a ruling on the motion after consideration of the reason for the continuance request, the age of the case, the pre-trial detention status of the defendant, and the number and type of other trial matters present on the trial calendar for the session. In the event the senior Resident superior court judge is unavailable due to rotation travel, a Resident Superior Court Judge or any other judge designated by the Senior Resident Superior Court Judge may rule on continuance motions.

11.4 No case shall be continued without rescheduling the trial to date certain except in a case of extreme or unusual circumstances.

Rule 12: Miscellaneous Provisions

12.1 Motions filed seeking appropriate relief shall be heard during **Case Management Sessions**. IN the event the motion is to be heard on its merits, the judge will establish the hearing date and cause all parties to be given notice.

12.2 Nothing contained herein shall be used in such a way as to deprive any defendant of any right provided by law.

ENACTED THIS DATE, FEBRUARY _____, 1998.

John Mull Gardner
Senior Resident Superior Court Judge

I consent to the terms of this order.

William C. Young, District Attorney

(EXHIBIT "A")

State of North Carolina
County of _____

In the General Court of Justice
Superior Court Division
File # _____

STATE OF NORTH CAROLINA

vs.

**Discovery Certificate
(DC)**

Defendant

I am the prosecutor assigned to prosecute the above-captioned case.

I certify that I provided discovery in the following manner to the defendant of matters required under N.C.G.S. 15A-903 et seq:

- A. By providing the attorney for the defendant with a copy of the State's investigative file, reports of evidence examinations and the criminal history of the Defendant as received by this office.
- B. By providing the attorney for the defendant with a partial copy of the State's investigative file, reports or evidence examination and the criminal history of the defendant as received by this office.
- C. By providing formal discovery of matters pursuant to N.C.G.S. 15A-903 et seq. In addition to this disclosure, I recognize my continuing duty of disclosure. I will make good faith efforts to disclose to the Defendant any and all exculpatory materials available to the State.

This done on _____, _____.

_____, Prosecutor

Certificate of Service

I certify that I served a copy of this Discovery Disclosure Certificate and the accompanying Discovery by:

- delivering a copy personally to _____; attorney for the Defendant, or by;
- placing a copy in the mail to _____, attorney for the Defendant or by:
- leaving a copy with the receptionist at the office of the attorney for the defendant, or by:
- placing a copy in the mailbox of _____ maintained by the Clerk of Superior Court.

Dated this the ____ day of _____, _____.

_____, Prosecutor

(EXHIBIT "B")

State of North Carolina
County of _____

In the General Court of Justice
Superior Court Division
File # _____

STATE OF NORTH CAROLINA)
)
 vs)
)
 _____)

Scheduling Order

IT APPEARING to the undersigned Superior Court Judge that the following is the administrative history of this case.

The First Setting for the above captioned matter was held in open court on _____, _____. At that Setting the Court found that Defense Counsel had entered a general appearance, and the State had provided Discovery Disclosure Certificate filed in this matter,

The Second Setting was held on _____, _____. At that Setting the Court determined that a plea offer had been communicated to defense counsel and all pre-arraignment motions on file were heard.

The Third Setting for this case was held on _____, _____. On that date the Defendant entered a plea of not guilty to the charges in this matter.

THEREFORE, THE COURT SETS THE FOLLOWING SCHEDULING DATES FOR THIS CASE:

- (1) All pretrial motions (except those required to be heard before the Trial Judge) shall be filed with the clerk and served upon opposing counsel on or before _____.
- (2) Any filed pretrial motions shall be heard on _____, _____.
- (3) Trial of this case is scheduled for the week of _____, _____.

This done on _____, _____.

Superior Court Judge